really allow recovery for negligence, which seems sound, and yet they avoid the difficulties of an action of negligence *eo nomine*. This would seem a just and conservative departure from the older conception of "deceit" as involving conscious dishonesty. The instant case seems clearly sound, and is in accord with previous Kansas decisions. *Bice v. Nelson* (1919) 105 Kan. 23, 180 Pac. 206.

TORTS—MALICIOUS PROSECUTION—CIVIL ACTION—ABSENCE OF INTERFERENCE WITH PERSON OR PROPERTY.—The defendant had harassed the plaintiff, by instituting civil suits against her and dismissing them on appearance of counsel, in the hopes of extorting money from her. There had been no seizure of her property or interference with her person. From a judgment in favor of the plaintiff in an action for malicious prosecution the defendant appealed. *Held,* that the action did not lie for merely beginning a civil action, unless property or person had been wrongfully seized or in some manner injuriously affected by process issued therein. *Pye v. Cardwell* (1920, Tex. Civ. App.) 224 S. W. 542.

There are two views concerning the essential elements of the tort of malicious prosecution of a civil action. According to the first, the cause of action is dependent upon the nature of the injury resulting from the commencement of the suit. Where there is a special injury to reputation, to property, or to person, a cause of action arises. *Luby v. Bennett* (1901) 111 Wis. 613, 87 N. W. 804; *Lawrence v. Hagerman* (1870) 56 Ill. 68; Chapin, *Torts* (1917) 477. Where there was no special injury, as in the instant case, no recovery is allowed. *Weber-Pleuthert Co. v. Leventhal* (1918, Sup. Ct.) 103 Misc. 80, 169 N. Y. Supp. 248. Some courts on this principle hold that the defendant has his action if he shows special damages over and above taxable costs. *Carbondale Investment Co. v. Burdick* (1903) 67 Kan. 329, 72 Pac. 781. By the other and preferable view one has no legal privilege to commence an action with malice and without probable cause. The act of commencing is the tort, the injury resulting being merely the measure of damages. *Kolka v. Jones* (1897) 6 N. D. 461, 71 N. W. 558; *Peerson v. Ashcraft Cotton Mills* (1918) 201 Ala. 348, 78 So. 204; see (1918) 16 MICH. L. REV. 653; (1918) 32 HARV. L. REV. 85. The action of malicious prosecution existed at common law. *Waterer v. Freeman* (1640) Hob. 205, 266; 1 Co. Lit 161a; see Lawson, *The Action for the Malicious Prosecution of a Civil Suit* (1882) 30 AM. L. REG. 281, 283. But the Statute of Marlbridge [52 Hen. III c. 6 (1267)] took away the necessity for it by allowing heavy costs to the defendant in actions brought *pro falso clamore*. Thereafter the action was denied unless some special injury was shown. *Saville v. Roberts* (1698, K. B.) 1 Ld. Raym. 374. American Courts following the English rule lack the fundamental reason for it, as costs awarded in American courts do not pretend to approximate the expenses of litigation. See *Kolka v. Jones* (1897) 6 N. D. 461, 466, 71 N. W. 558, 561. It is also said in support of the rule of the instant case that honest litigants will be deterred from coming into court and that the courts will be crowded with actions of malicious prosecution if a contrary policy should be adopted. Such, however, has not been the result. See *Peerson v. Ashcraft Cotton Mills, supra* (1918). Nor does much harm seem to have resulted from arming "fraudulent debtors with a right to recover damages through perjured testimony." The tendency now appears to be opposed to the principal case. *Teesdale v. Liebchwager* (1919, S. D.) 174 N. W. 620; see 26 Cyc. 15; L. R. A. 1918 D, 550, 555. It is suggested that a solution of the question lies in legislation granting costs and damages to a successful defendant when he could prove the suit was brought maliciously and without probable cause.